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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/827,846      | 04/06/2001  | Shinichi Eda         | RDC 12320 Div.      | 7993             |

26345 7590 09/18/2002

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NEWARK, NJ 07102-5497

EXAMINER

GABEL, GAILENE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1641

DATE MAILED: 09/18/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

|                        |                        |                     |
|------------------------|------------------------|---------------------|
| <b>Advisory Action</b> | <b>Application N .</b> | <b>Applicant(s)</b> |
|                        | 09/827,846             | EDA ET AL.          |
| <b>Examiner</b>        | <b>Art Unit</b>        |                     |
| Gailene R. Gabel       | 1641                   |                     |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

a)  The period for reply expires 3 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

(a)  they raise new issues that would require further consideration and/or search (see NOTE below);

(b)  they raise the issue of new matter (see Note below);

(c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1-17 and 19-21.

Claim(s) withdrawn from consideration: NONE.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_

*Christopher L. Chin*  
CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800/641

*8/16/02*  
9/16/02

Continuation of 2. NOTE: The amendment of claim 1 which requires that the microparticles are "capable of causing light scattering at wavelengths suitable for the detection of agglutinated microparticles" raises new issues of consideration under the provisions of 35 USC 112, second paragraph. Specifically, claim 1 fails to provide a positive limitation in the claim in reciting, "capable of". Further, the recitation of "said microparticles" lacks clear antecedent support. Also, the recitation of "the detection of agglutinated microparticles" lacks clear antecedent support since there is no prior provision that the two separate populations of microparticles are caused to agglutinate; only that they each have a mean diameter and refractive index, and that each are suitable for enhanced light scattering assays. It is, therefore, unclear how the "detection of agglutinated microparticles" relate to the two populations, i.e. first and second, of microparticles so as to be used in an agglutination assay to determine an amount of analyte in the sample, as required by the preamble.

Continuation of 5. does NOT place the application in condition for allowance because: the amendment of claim 1 fails to obviate the teaching and/or suggestion of the prior art of record. Further, the amendment of claim 1 raises new issues of consideration under the provisions of 35 USC 112, second paragraph.